HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Jagdish Bhalla, Ag. C. J.

W.P No.3296 of 1994

PETITIONERS

1. Budhiyar Sahu, Aged about 40 years. S/o Punitram Sahu, Kastiapara, Dhamtari, Distt. Raipur (M.P.)
2. Mehtar Sahu, Aged about 50 years, S/o Durjan Sahu
3. Ghurau Ram Aged about 45 years, S/o Sadhuram
4. Ramalal Aged about 34 years, S/o Daharamram Sahu
5. Kapil Aged about 40 years, S/o Goursingh Sahu,
6. Girdhari, Aged about 45 years, S/o Durjan
7. Kamlesh Kumar Aged about 18 years, S/o Harishankar Sahu,

Pettioners No.2 to 7 – All residents of village Khaira, Tahsil Durud, District Raipur, M.P. (Now CG)

versus

RESPONDENTS

1. Johatram, Aged 30 years, S.o Ajab Singh, R/o Gram Dhankhaira, Tahsil Dhamtari, District Raipur, M.P. (now CG)
2. Shalikram Chandrakar, Aged about 50 yrs. S/o Dehraram Chandrakar, R/o Village Chati, Tahsil Dhamtari, District Raipur
3. Board of Revenue, M.P., Gwalior.
4. The Collector, Raipur
5. Sub Divisional Officer, Dhamtari, District Raipur, M.P.
6. Naib Tahsildar, Dhamtari, M.P.

Writ petition under Articles 226/227 of the Constitution of India.

Present : None for the petitioners.
Shri N.K. Agrawal, Dy. A.G. for the State.

ORAL ORDER

(Passed on 14th June, 2007)

The petitioners had exchanged their respective land with respondents No. 1 and 2 who are Adivasi. According to Section 170-B of the Land Revenue

Code,1959 it is incumbent upon the petitioners to furnish the said information. Section 170-B reads as follows :

> **"[170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.** (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.
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> (2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.
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> [(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs:
>
> Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.]
>
> (3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void

and pass an order re-vesting the agricultural land in the transferer and, if he is dead, in his legal heirs.]

[(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and-

(a) Where no building or structure has been erected on the agricultural land prior to such finding pass an order re-vesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer.]

The Sub Divisional Officer by his order dated 29-06-1987 declared this exchange of land as bad in law. Accordingly, the Sub Divisional Officer directed the petitioner to handover the land of Adivasi back to them. Thereafter the petitioners filed an appeal before the Additional Collector which was dismissed for want of prosecution vide order dated 23-10-92 as none had appeared on behalf of the petitioners. Aggrieved by the said order, the petitioners approached the Additional Commissioner who set-aside the order passed by the Additional Collector and remanded the matter back to the Additional Collector. Aggrieved by the said order the petitioners filed an appeal before the Board of Revenue. The Board of Revenue by its order dated 06-06-1994 confirmed the order passed by Sub Divisional Officer. Hence, this writ petition.

After hearing counsel for the parties, I am of the opinion that the petitioners had not complied with the provisions of Section 170-B as referred hereinabove. I further find that the impugned order was passed after affording due opportunity to the petitioners to adduce evidence before the Sub Divisional Officer. However, this Court finds that learned counsel for the petitioner failed to substantiate the mandatory compliance of furnishing information to the party concerned under Section 170-B of the Land Revenue Code, 1959.

In view of above, there is no illegality in the order passed by the Court below and the same is in accordance with law. Thus, no interference is called for in the impugned order. Petition is dismissed.

Sd/-
Acting Chief Justice

Kamale